

803 KAR 025:290. Continuation of medical benefits.

RELATES TO: KRS 342.0011(13), 342.020.

STATUTORY AUTHORITY: KRS 342.020, 342.260, 342.265, 342.270, 342.275.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of administrative law judges so long as those administrative regulations are consistent with KRS Chapter 342 or KRS Chapter 13A. KRS 342.020(1) provides an employer shall pay for the cure and relief from the effects of an injury or occupational disease as required at the time of injury and thereafter for the length of time set forth in KRS 342.020. KRS 342.020(3) sets forth the length of time for which the employer is responsible for payment and provides an employee shall receive a continuation of the benefits provided in KRS 342.020 beyond the stated length of time if certain criteria are met. KRS 342.020(3) further provides the department shall, 754 weeks from the date of injury or last exposure, notify the employee of the right to file an application for continuation of the benefits provided in KRS 342.020. This administrative regulation applies to the benefits provided in KRS 342.020 and for which the employer's responsibility for payment is limited to 780 weeks. This administrative regulation establishes the process by which the department will notify the employee of the right to file an application to continue the benefits provided by KRS 342.020, the method by which the employee is to make application, and the process by which an administrative law judge will determine and order a continuation of benefits for an additional time beyond the original period.

Section 1. Definitions.

(1) "Benefit Review Conference" means a benefit review conference as described in 803 KAR 25:010, Section 13.

(2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the department and whose duties are stated in KRS 342.230.

(3) "Department" means the governmental entity whose responsibilities are provided in KRS 342.228.

(4) "Notice" means a communication from the commissioner or his designee advising a claimant of the right to file an application to extend the employer's liability for payment of benefits beyond the 780-week limitation provided in KRS 342.020(3).

(5) "Notice of Filing of Application" means a document that alerts the parties to a claim that an application to extend the employer's obligation for payment of benefits beyond the 780-week period has been filed, assigns the matter to an administrative law judge, and provides a Litigation Management System access number to those parties.

(6) "Week" means seven (7) consecutive days; the day of injury or date of last exposure shall not be included when computing the 780-week period for which the employer has the obligation to pay the benefits specified in KRS 342.020.

Section 2. Notice; Duty to Inform the Department of Workers' Claims of Change of Address.

(1) 754 weeks from the date of injury or last exposure, the commissioner shall advise the claimant in writing of the right to file an application for the continuation of medical benefits. Notice shall be mailed by first class mail to the claimant's last known address as reflected in the department's Litigation Management System. Notice shall also be sent electronically to the last email address provided by the claimant to the department. The day of injury or date of last exposure shall not be included when computing the 754-week period; when the last day of the 754-week period falls on a Saturday, Sunday, or state holiday, the notice shall be generated the next day which is not a Saturday, Sunday, or state holiday.

(2) Subsequent to the entry of an award or approval of a settlement agreement in which medical benefits are either awarded or not waived, the claimant shall notify the department in writing in a format prescribed by the commissioner of any change in physical mailing address and email address within thirty (30) days of such change of address.

(3) Subsequent to the entry of an award or approval of a settlement agreement in which medical benefits are either awarded or not waived, the employer and medical payment obligor shall notify the department in writing in a format prescribed by the commissioner of any change in the claimant's physical mailing address or email address of which it, or its agents, become aware. The notice shall be given within thirty (30) days of the date the employer, medical payment obligor or any agent thereof becomes aware of a change in the claimant's address.

Section 3. Procedure for Filing and Resolution of Applications for Continuation of Medical Benefits.

(1) The claimant shall file an application for continuation of medical benefits on the form prescribed by the commissioner no sooner than seventy-five (75) days prior to the last day of the 780-week period from the date of injury or last exposure and no later than the last day of the 780-week period from the date of injury or last exposure.

(2) (a) With the application for continuation of medical benefits the claimant shall file a medical report on the form prescribed by the commissioner. The medical report shall include:

1. A description of the injury or occupational disease for which medical benefits were awarded or approved and for which an application for continuation of medical benefits is being filed;

2. A medical opinion that asserts continued medical treatment is reasonably necessary, related to the work injury or occupational disease, and explains the basis for that opinion; and

3. A general description of the medical treatment that may reasonably be expected.

(b) With the application for continuation of medical benefits and the medical report the claimant shall file a newly executed Form 106.

(3) A medical provider shall be entitled to charge a fee not to exceed \$100 for preparing the report described in subsection (2). The fee shall be paid by the claimant.

(4) Filing an application for continuation of medical benefits shall stay termination of the employer's obligation to pay the benefits pursuant to KRS 342.020(3)(a) pending resolution of the application.

(5) Following the filing of an application for continuation of medical benefits, the commissioner shall issue a Notice of Filing of Application that shall:

(a) Be mailed to the claimant and employer, and, when applicable, one (1) of the following payment obligors: the employer's insurance carrier, self-insured group, uninsured employers fund, guaranty fund, or other payment obligor;

(b) Provide the parties a Litigation Management System access code; and

(c) Assign the matter to an administrative law judge.

(6)(a) Within sixty (60) days of the date of the Notice of Filing Application, the defendant shall file a Notice of denial or acceptance of the application.

(b) If the defendant accepts the application for continuation of medical benefits, the administrative law judge shall issue an order granting the extension of medical benefits beyond 780 weeks from the date of injury or last exposure. Acceptance of the application for continuation of medical benefits shall not be deemed an admission of compensability as to any specific medical treatment beyond 780 weeks from the date of injury or last exposure. The defendant retains the right to file a motion to reopen pursuant to 803 KAR 25:010, Section 6(5), and 803 KAR 25:012, Section 1(6) in order to assert a medical dispute to challenge compensability of specific medical treatment;

(c) If the defendant denies the application for continuation of medical benefits, it may file a medical report with the denial. The medical report shall include the following:

1. A description of the injury that is the basis of the claim; and
2. A medical opinion asserting continued medical treatment is not reasonably necessary, not related to the work injury or occupational disease, and explaining the basis for that opinion.

(d) At the conclusion of the sixty (60) day period provided in paragraph (a) of this subsection in which the defendant is to file its denial or acceptance of the application, the claimant shall have fifteen (15) days in which to file additional medical evidence in rebuttal to the evidence filed by the defendant; and

(e) If the defendant fails to timely file its denial of the application, the administrative law judge shall issue an order granting the extension of medical benefits beyond 780 weeks from the date of injury or last exposure.

(7) (a) If the defendant files a denial of the application, the administrative law judge shall schedule a telephonic Benefit Review Conference to be held within twenty (20) days of the conclusion of the claimant's rebuttal period provided in subsection (6)(d) of this section.

(b) The telephonic Benefit Review Conference shall be an informal proceeding.

(c) A transcript of the telephonic Benefit Review Conference shall not be made.

(d) All parties and representatives participating in the telephonic Benefit Review Conference shall have authority to immediately resolve disputed issues and enter into a binding settlement agreement with respect to the application.

(e) If at the conclusion of the Benefit Review Conference the parties have not reached an agreement on all issues, the administrative law judge shall:

1. Prepare a final Benefit Review Conference memorandum and order, which identifies all contested issues; and

2. Schedule a formal hearing unless the formal hearing is waived by the parties.

(8) The claimant shall have the burden of proof to demonstrate continued medical treatment is reasonably necessary and related to the work injury or occupational disease.

(9) Within sixty (60) days following conclusion of the formal hearing or order waiving the formal hearing, the administrative law judge shall issue an award, order or decision, which shall include a statement of findings of fact and conclusions of law.

(10) An order granting a continuation of benefits beyond 780 weeks shall not include an award of any specific medical treatment identified in the medical report submitted in support of the application.

(11) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of the decision, order or award of the administrative law judge in accordance with the procedures set out in 803 KAR 25:010, Section 20.

(12) Pursuant to KRS 342.285(1), the decision of the administrative law judge shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in 803 KAR 25:010, Section 22.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Continuation of Medical Benefits, Form CMB-APP-1", 8/18;

(b) "Medical Report in Support of Continuation of Medical Benefits, Form CMB-APP-2", 8/18;

(c) "Change of Address, Form CMB-ADD-3", 8/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. (45 Ky.R. 2256, 2901; eff. 5-3-2019.)